HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 823/2004
Nagar Palika.

Vs.

District & Session Judge
Haridwar & others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 8.8.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 823 (MS) OF 2004

Nagar Palika Parishad,
Haridwar, through its Executive Officer. .....Petitioner.

Versus

1. District & Sessions Judge, Haridwar.
2. Uttar Pradesh State Road Transport Corporation Dehradun, through its Regional Manager.

.....Respondents.

WRIT PETITION NO. 824 (MS) OF 2004

Nagar Palika Parishad,
Haridwar, through its Executive Officer. .....Petitioner.

Versus

1. District & Sessions Judge, Haridwar.
2. Uttar Pradesh State Road Transport Corporation Dehradun, through its Regional Manager.

.....Respondents.

Dated: 08.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petitions, the petitioner has prayed for a writ of certiorari quashing the order dated 31.05.2004 passed by the District Judge, Haridwar.

3. Briefly stated, the proceedings under Section 4 of the U.P. Public Premises (Eviction of Unauthorised Occupant) Act 1972 was started against the respondent no. 2. The petitioner filed an application under Section 4 and 7 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 stating therein that he is the owner of the premises and the premises is covered under the provision of Section 2 (e) of the Act. It was stated that the respondent no. 2 is the tenant at the rate of Rs. 175/- per month. Nagar Palika Parishad has sent a notice on 24th September, 2001, which was received by the respondent no. 2 but in spite of that he has not vacated the premises.

4. The respondent no. 2 has contested the proceeding by filing his written statement and has submitted that the proceedings are barred by the provisions of res-judicata in as much as on 27th March, 1985 proceedings for eviction were started by filing Suit No. 3 of 1985, which was dismissed. Disputed land has been allotted on 11.11.1950 for a lease for 99 years on a rent of Rs. 175/- per month vide Government Order No. 63C68-T/600T249 and therefore, the respondent no. 2 is not an unauthorized occupant.

5. The Prescribed Authority has rejected the application filed by the petitioner. It was also observed that the principles of res judicata will apply in as much as earlier proceedings have come to an end.

6. Aggrieved by the aforesaid order, two appeals were filed one appeal no. 25/2003 and another 26/2003. Both were rejected. It has been held that the respondent no. 2 is the tenant at the rate of Rs. 175/- per month.

7. So far as the execution of the lease deed is concerned, the same has been filed and is on the record, which shows that the lease was executed for a period of 99 years and the period has not yet expired and therefore, the respondent no. 2 cannot be said to be unauthorized occupant.

8. Counsel for the petitioner has submitted that the status of the respondent no. 2 is an unauthorized occupant in as much as tenancy has already been terminated under Section 106 of the Transfer of Property Act by sending a notice on 24.09.2001.

9. Counsel for the respondent no. 2 has disputed that he is unauthorized occupant. Section 2 (g) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 reads as under:-

> *"(g) "authorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."*

10. As will appear from the aforesaid definition, a person can be said to be unauthorized occupant, who is occupying the premises without any grant or other mode of transfer. In the present case as already stated above, a valid lease for a period of 99 years has been granted in favour of the respondent no. 2 and the respondent no. 2 is paying the rent at the rate of Rs. 175/- per month in pursuance of the said lease deed.

11. The second argument of the petitioner is that after notice having been served, the status of the petitioner shall become of unauthorized occupant, who can be evicted in proceedings under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

12. I do not find force in the aforesaid arguments in as much as by sending the notice under Section 106 of the Transfer of Property Act, no one can be ousted except by procedure prescribed by law. Section 106 of the Transfer of Property Act is only a procedure by which the tenancy is terminated in order to institute the suit or the other legal action, which the petitioner may deem fit.

13. In ***Mohd. Siddiqui v. IIIrd A.D.J. Unnao 1997 (2) ARC Page 400,*** it has been held that the inspite of the determination of the tenancy of tenant in accordance with the provisions contained in the transfer of property act he can be permitted to continue in the accommodation in the capacity of statutory tenant. Relevant observations are quoted below:-

> *"20. There is yet another aspect which cannot be over-looked. The provisions contained in Section 20(2) of the U.P. Urban Buildings (Regulation of Letting Rent*

and Eviction) Act, 1972 indicate that inspite of the determination of tenancy of a tenant in accordance with the provisions contained in the Transfer of Property Act, the tenant is permitted to continue in the accommodation under this tenancy which accommodation is within the purview of the act in the capacity of a statutory tenant with a bar in regard to seeking his eviction by filing a suit for the purpose but this bar stands lifted once the landlord succeeds in establishing the requirements envisaged under Section 20(2) (a) of the Act and satisfies the conditions prescribed thereunder. As observed by the Apex Court, the Rent Control Acts are necessary social measure for protection of tenants."

14. After referring various judgment of the Apex Court In ***Vashu Deo Vs. Balkishan (2003) 2 SCC 50,*** it has been held as under:-

"12. We have already stated that the respondent's tenancy in the suit premises will not come to an end unless and until a decree for eviction on one of the grounds available under the Rajasthan Act has been passed against him and termination of his tenancy upheld by a judicial verdict. Till then he would remain a tenant of the Trust. Mere institution of a suit for eviction by the Trust, the owner of the property, against the respondent does not bring the tenancy of the respondent to an end. The respondent cannot be said to have been evicted by title paramount. It cannot be said that the respondent-tenant does not have any defence nor can be lawfully resist the suit filed by the owner Trust. The plain and simple legal position which flows is

that the appellant must discharge his statutory obligation to put his landlord, that is, the respondent in possession of the premises in view of the latter's entitlement to hold the tenancy premises until his own right comes to an end and the respondent must discharge his statutory obligation to put his own landlord, that is, the Trust, in possession of the tenancy premises on his entitlement to hold the tenancy premises coming to an end."

15. As will appear from the aforesaid observation of the Apex Court, that the tenancy would be determined only and the liability of eviction will arise only when a decree for eviction is passed.

16. Further in ***Chandra Kali Vs. Jagdish Singh Thakur 1977 (4) SCC Page 402; AIR 1977 SC 2262,*** *it has been held by the Apex Court that merely terminating the contractual tenancy, the tenant shall remain as a tenant unless the decree for eviction is passed against him. Relevant observations are quoted below:-*

"8. For appreciation of the third point urged for the appellant it would be again useful to refer to a few corresponding revisions of the two Acts. In the 1955 Act, tenant was defined in cl. (f) of S. 3 to mean "a person by whom rent is payable or but for a contract express or implied would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant. "In the 1961 Act, however, the definition of tenant has been widened and S. 2 (i) reads thus:

"tenant' means a person by whom or on whose account or behalf the rent of any accommodation is, or,

but, for a contract express or implied, would be payable for an accommodation and includes any person occupying the accommodation as a sub-tenant and also, any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made."

On a plain reading of the definition aforesaid it is clear that a tenant even after the termination of his contractual tenancy does not become an unauthorized occupant of the accommodation but remains a tenant. It has been pointed out by this Court in Damadilai v. Parashram, (1976) Supp SCR 645 : (AIR 1976 SC 2229) that such a tenant is conveniently called a statutory tenant. Whether the expression aforesaid borrowed from the English Law is quite apposite or not, but, what is certain is that a person continuing in possession of the accommodation been after the termination of his contractual tenancy is a tenant within the meaning of the Act and on such termination his possession does not become wrongful, until and unless a decree for eviction is made. If he continues to be in possession even after the passing of the decree, he does so as a wrongful occupant of the accommodation.

9. Mrs. Seth in support of her argument rightly pressed into service a few other provisions of the Act. Section 13 (1) giving protection against eviction on the ground of default in payment of rent provides therein that even after the institution of the suit if he clears off the amount of rent due within a period specified in the section and thereafter 'continue to deposit or pay,

month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate' calculated at the rate of rent at which he was paying earlier, no decree for eviction can be passed. The conclusion is inevitable, therefore, that if a suit is filed on the ground of non-payment of rent after termination of the contractual tenancy, the tenant still continues to be a tenant liable to pay rent not only for the past period but in future also. In absence of a decree of eviction the person in occupation of the accommodation continues to be a tenant and is not liable to pay any damages as his occupation is not unauthorized or wrongful even after the termination of the contractual tenancy. In Damadilal's case (AIR 1976 SC 2229) (supra), Gupta J. delivering the judgment of this Court has said at p. 653 with reference to the definition of tenant in S. 2 (i) of the Act:-

"The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, and not merely a personal right of occupation, will also appear from S. 14 which contains provisions restricting the tenant's power of subletting."

17. Counsel for the petitioner has referred ***State of U.P. Vs. Roop Lal Sharma and others 1997(2) AWC***

927 (SC), where it has been held that there is no question of res judicata. In paragraph 6 of the judgment, it has been held that there is no scope from concluding that the building in question is a public premises. Relevant paragraph 6 is quoted below:-

> *"6. "Public premises" is defined in Section 2(e) of the Act as meaning any premises 'belonging to or taken on lease or requisitioned by or on behalf of the State Government..." The first respondent never disputed that the building belongs to the Government and all he has said was that it belongs to the Government estate. It does not matter. The definition of public premises is so wide as to hedge in all such buildings whether it actually belongs to Government as such or only to a Government department or even a building belonging to a private individual if Government has requisitioned it or some person on behalf of the Government has requisitioned it. Hence, there is no escape from concluding that the building in question is public premises."*

18. A bare reading of the judgment of the Apex Court shows this fact that the building is public premises. However, in the present case, since the respondent no. 2 is a valid lessee, recourse to the proceedings can be initiated in appropriate forum and not under the public premises so as to treat the respondent as unauthorized occupant.

19. In view of the aforesaid, I do not find any illegality in the order passed by two Courts below.

20. In view of the above, writ petition lacks merit and are dismissed. However, it will not deprive the petitioner from evicting the respondent no. 2 in accordance with the law in appropriate proceeding.

21. No order as to costs.

(Rajesh Tandon, J.)

08.08.2006

Rathour